

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2292 OF 2005

Mohd. Ali Mohd. Yusuf

Shaikh alias Barmawala ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.A.P. Mundargi, with Mr. Ganesh
Gole, for the Applicant.

Mr.A.S. Gadkari, A.P.P. for the Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 7, 2005.

P.C.

1. Heard Counsel for the parties. This application has been brought before this Court in unusual situation. It is seen from the record that the Applicant had suffered injury which aggravated to inflicting his right foot with gangrene. The Applicant had reported to the concerned Judge about the injury when he was produced before the Court.

The Applicant was sent for medical treatment to Sassoon Hospital, Pune. Later on, the Medical Officer, Sassoon Hospital, Pune, issued certificate that there was no gangrene. Similar report has been given by the Chief Medical Officer, Yerwada Central Prison, Pune, that the health condition of the Applicant was stable. It is on that basis the lower Court proceeded to consider the bail application preferred by the Applicant for release on medical grounds and rejected the same on March 28, 2005.

. The grievance made on behalf of the Applicant before this Court by Mr. Mundargi is that the concerned Judge was apprised by the Advocate, who was appearing in the Court, that he had personally seen the health condition of the Applicant and he was convinced that gangrene was already set in and that the Applicant required immediate medical treatment. But this aspect was overlooked by the lower Court and reliance was placed on the medical reports on record. In due course of time, now, it transpires that the portion of the right foot of the Applicant has been severed being infected with gangrene, which was of advanced

stage. In other words, when the Applicant approached the lower Court at the opportune time, no attention was paid to his complaint by the Court, which has resulted in the present situation.

. The lower Court cannot be blamed because it was persuaded to take the view on the basis of the medical reports submitted by the Medical Officer, Sasson Hospital, Pune dated March 24, 2005 and the Chief Medical Officer, Yerwada Central Prison, Pune of even date. The fact that incorrect and misleading reports were submitted by the two medical officers, who are obviously responsible officers, is a matter of concern. These reports have resulted in a situation, which was avoidable. Be that as it may, it will be open to the Applicant to take such remedial action against the concerned persons, as may be advised and permissible by law. For the time being, I am only confining this order for considering prayer for bail. In my opinion, having regard to the fact situation of the present case, the Applicant deserves to be enlarged on bail by imposing following strict conditions.

(A) The Applicant is directed to be released on bail in connection with CR.No.4/2004 registered with Yerwada Police Station on executing personal bond in the sum of Rs.10,000/- (Rupees Ten thousand only) with two local sureties in the like amount.

(B) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(C) The Applicant shall report to the concerned Police Station once in a week on Saturday between 10 a.m. to 2 p.m., after the Applicant is discharged from the hospital, during the pendency of the trial.

(D) The Applicant shall co-operate for the early disposal of the trial. If the trial Court is of the opinion that the Applicant is in any manner responsible for causing

delay in disposal of the trial, that fact be recorded in the roznama, which can be a ground for cancellation of bail.

(E) The requirement of reporting to the concerned police station shall become effective from the first week of May 2005.

. It is once again made clear that I am not expressing any opinion on the remedy available to the Applicant against the Medical Officers who caused to give incorrect and misleading certificates resulting in a situation which was avoidable. Whether the certificates were incorrect or otherwise, that aspect will have to be considered in the appropriate proceedings.

. Copy of this order be forwarded to the Secretary, Public Health Department, Government of Maharashtra, to take appropriate action in the matter against the medical officers, as may be advised. This course has been adopted because the Chief Medical Officer, Yerwada Central Prison, Pune, who has appeared in person to instruct the

learned A.P.P. states that he has assumed the charge only recently on 1st April 2005.

. Application disposed of accordingly.